

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
JUNE 9, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:32 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Julia James, Administrative Services Director; Vic Peterson, Building Official; Paul Adams, Parks and Recreation Director; Sharyl Beebe, Associate Planner; Scott Albright, Senior Planner; Ed Knight, Interim Planning Manager; Barbara Cameron, Contract Grant Writer; Lt. Gloria Gressman, Malibu Lost Hills Sheriff's Station; and Lisa Pope, City Clerk

FLAG SALUTE

Barbara Cameron led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the Council met in closed session at 5:30 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. Chicksands Properties LTD. v. City of Malibu et al.
Los Angeles County Superior Court Case No. BS072081

2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
4. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641
Related cases (city named as a party in interest):
 - a. Rick Appel v. California Coastal Commission
Case No. SC074658
 - b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
 - c. Land Use Preservation v. California Coastal Commission
Case No. SS011388
 - d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
 - e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
 - f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
 - g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
 - h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
6. City of Malibu / Geffen v. Access for All / Coastal Commission et al
Los Angeles County Superior Court Case No. BC277034
7. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. CV00-10255-FMC(JWJx)
8. Keach v. City of Malibu
Los Angeles County Superior Court Case No. SS009723
9. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
10. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Sacramento Superior Court) (Amicus)
11. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
12. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
13. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)

14. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
15. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
16. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu
Los Angeles County Superior Court Case No. BS072794
17. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753,
BS080758, BS080791

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

18. Number of Cases: 2

Real Estate negotiation matters pursuant to Government Code Section 54956.8:

19. Property APN: 4458-021-005 and 4458-022-012
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Tom Fitzpatrick
Under Negotiation: Price and terms of payment
20. Property APN: 4458-018-002, 018, 019
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Roy E. Crummer
Under Negotiation: Price and terms of payment
21. Property APN: 4458-022-019 and 4458-021-003
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Wave Property Inc.
Under Negotiation: Price and terms of payment
22. Property APN: 4472-027-901 & 902; 4472-028-901 & 902; 4473-005-901 & 902;
4473-006-900
Property Negotiator: City Manager Lichtig or designee
Buyer Negotiator: State of California / Santa Monica Mountains Conservancy
Under Negotiation: Price and terms of payment
23. Property located at: 23801 and 23833 Stuart Ranch Road
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Yamaguchi Tokiye Trust
Under Negotiation: Price and terms of payment

City Attorney Hogin indicated that the Council discussed some, but not all of the items listed on the posted agenda due to a lack of time. She indicated that the Council took only one reportable action. She indicated that the Council voted unanimously to file a notice of appeal of Judge Goodman's recent decision in the case of City of Malibu v. California Coastal Commission, Los Angeles County Superior Court Case No. SS011355. She further indicated that the City would continue to pursue a Court order that would permit the City to issue permits during the appeal process.

APPROVAL OF AGENDA

MOTION Councilmember Stern moved and Councilmember Jennings seconded a motion to approve the agenda, adding a presentation by Ozzie Silna. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was properly posted on May 30, 2003, with the Amended Agenda posted on June 6, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

Ozzie Silna presented a plaque of the 101st Airborne seal to the City Council.

ITEM 2 PUBLIC COMMENTS

Richard Scott asked if there is an automatic stay during the appeal period, and therefore, the City would not be permitted to process local coastal permits. He expressed concern regarding non-issuance of Coastal Development Permits including backlog, potential litigation and the impacts on contractors and architects.

City Attorney Hogin explained that an automatic stay would take effect. She indicated the Council was acutely aware of the burden on property owners. She discussed the referendum petition. She explained that the City would be filing the appeal and attempting to obtain a Court order to allow the City to issue Coastal Development Permits that are consistent with the General Plan and Local Coastal Program (LCP). She explained that, under the referendum, the entire LCP would not be implemented.

A. Thomas Torres urged the Council to move forward with those applications that have no issues in dispute.

Paul Grisante did not speak.

Mark Sirlon asked the order in which permits would be processed. City Attorney Hogin explained that staff was still working out the details. Mr. Sirlon asked if permits would be processed in the order approval in concept was obtained. City Attorney Hogin indicated permits could be processed on a first-come, first-served basis or some other order based on extent of review required.

John Kilbane indicated that he represents a number of property owners with applications in the pipeline. He expressed concern regarding delays in processing

applications. He urged the Council to take the rights of the people into consideration.

David Visser discussed the people's right to referendum. He expressed concern regarding delays in permit issuance.

Mike Barsoccini discussed impatience on the part of applicants. He asked what would happen if the present scenario failed.

Marissa Coughlan concurred with the previous speakers. She questioned what applicants could expect of the permitting agency. She asked on what basis decisions would be made if the City was successful in Court. She asked if the Coastal Commission could appeal decisions of the City on Coastal Development Permits.

Steve Hotchkiss addressed the Council regarding the day laborer problem at Trancas. He urged the Council to provide direction to the Sheriff's Department to enforce loitering laws.

Peter Schulan expressed concern over the Trancas area day laborer situation. He urged the City to maintain a single day laborer exchange.

Dermot Stoker presented photographs of the day laborer situation in the Trancas area. He discouraged the idea of an annex day labor exchange in the Trancas area. He suggested additional Sheriff's enforcement.

Rebecca Dmytryk discussed her 24-hour wildlife paramedic service for marine mammal rescue. She explained that the only way she would be able to rescue the animals was as an official of a government agency, such as an agent of the City. She requested the Council consider entering a contractual agreement with her.

Kay Furgurson expressed concern about the cost of Coastal Development Permit fees.

Jack Evans presented a Golden Bat to Councilmember Jennings for his support of Malibu Little League.

Laura Rosenthal, Measure S Committee, thanked the Council and citizens of Malibu for their support of Measure S. She stated people must continue to support public education.

B. COUNCIL COMMENTS

Councilmember House discussed the litigation related to the Local Coastal Program. She discussed the legislation authorizing the Coastal Commission to write the City of Malibu's Local Coastal Program. In response to Councilmember House, Lt. Gressman indicated the Sheriff's Department was well aware of the day laborer situation and was planning an abatement of the area. She discussed the patrol by Deputy Castro. Councilmember House asked if additional enforcement could be implemented for a certain time frame. Lt. Gressman indicated the beach team would assist with encampment abatement. Councilmember House requested Lt. Gressman attend the next Council meeting to provide an update. She suggested referring Ms. Dmytryk's request to staff. She discussed the City's affinity card. She indicated she attended the Chamber of Commerce Mayor's luncheon. She stated she and Mayor Pro Tem Barovsky met with Joe Edmonston, Santa Monica Mountains Conservancy.

Councilmember Stern indicated he attended the Mayor's luncheon. He indicated support for referring WildRescue's request to staff. He stated the Council was aware of the hardship over Coastal Development Permits. He thanked the Measure S Committee for their work on the bond measure. He indicated support for more active enforcement by the Sheriff's Department in the Trancas area.

Mayor Pro Tem Barovsky discussed the concerns expressed regarding day laborers in the Trancas area. She discussed Ms. Dmytryk's request. She discussed the success of Measure S and thanked the Measure S Committee. She thanked Mr. Silna for his presentation.

Councilmember Stern requested staff investigate the possibility of Ms. Dmytryk's request as soon as possible.

Councilmember Jennings discussed the LCP litigation. He stated he expected the City to begin issuing Coastal Development Permits. He indicated he was hopeful that Court would issue an order that would protect the applicants when the City began to issue permits. He stated that his full expectation was that the Coastal Commission could and would appeal permits where they have full appeal jurisdiction. He thanked and congratulated the Measure S Committee. He thanked Malibu Little League for the Golden Bat. He stated he and City Manager Lichtig met with California Department of Parks and Recreation Acting Director.

Mayor Kearsley stated he met with Joe Edmonston and State Parks and that the enthusiasm was fantastic. He congratulated the Measure S Committee. He requested the committee assist with a City bond measure.

Mayor Pro Tem Barovsky asked Ms. Rosenthal about voter turnout in Malibu. Ms. Rosenthal stated official results would be available on June 17, 2003.

Mayor Kearsley thanked Mr. Silna for his presentation. He suggested contractors and people hiring day laborers not hire laborers at Trancas. He explained that the State of California had the right to referend the Coastal Commission's legislative act adopting an LCP for the City.

ITEM 3 CONSENT CALENDAR

Councilmember House pulled Item Nos. 3.B.4. and 3.B.7.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to approve the Consent Calendar with the exception of Item Nos. 3.B.4. and 3.B.7. The motion carried unanimously.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 246

Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 246, an ordinance amending Title 17 of the Malibu Municipal Code (M.M.C.) by creating the Patriot Homes Overlay District and amending the Zoning Map to reflect the placement of the Patriot Homes Overlay District on property located at 22065 Pacific Coast Highway.

B. New Items

1. Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2. Approve Warrants

Staff recommendation: To allow and approve warrant demand numbers 22071 through 22172 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 285 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands, including payroll checks, in a total amount of \$215,816.35. ADP payroll voucher numbers 3721621 – 3721635 were issued in the amount of \$89,192.53.

3. Approval of Minutes
Staff recommendation: Approve City Council meeting minutes for the Regular City Council meeting held on March 24, 2003 and the Quarterly City Council meeting held on April 30, 2003.
5. Annual Pavement Rehabilitation Program – Award of Construction Contract
Staff recommendation: 1) Authorize the City Manager to execute a contract with Security Paving, Inc. of Sun Valley in the amount of \$629,831.00 for the Annual Pavement Rehabilitation Program; and 2) Appropriate an additional \$29,831.00 from the Traffic Safety Fund to account number 310-9002-7901.
6. Award of Contract for Landscape Maintenance Services
Staff recommendation: Authorize the City Manager to negotiate and execute a contract with VanderGeest Landscape Care consistent with the request for proposal (RFP) and proposal.

The following items were pulled from the Consent Calendar for individual consideration:

- ITEM 3.B.4.** Professional Services Agreement with Civic Solutions, Inc. to Provide Professional Planning Services to the City of Malibu
Staff recommendation: Authorize the City Manager to negotiate and execute a Professional Services Agreement with Civic Solutions, Inc. to provide professional planning services to the City of Malibu.

Councilmember House requested that the consultant meet with local architects and engineers regarding zone text amendments. City Manager Lichtig discussed the process of the zone text amendments.

- MOTION** Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to authorize the City Manager to negotiate and execute a Professional Services Agreement with Civic Solutions, Inc. to provide professional planning services to the City of Malibu, adding a provision to require the consultant confer with local architects and engineers regarding zone text amendments. The motion carried unanimously.

- ITEM 3.B.7.** Point Dume Nature Shuttle Contract
Staff recommendation: Award a two-year contract to Administrative Services Cooperative, Inc., d.b.a. LA Yellow Cab to provide shuttle service to and from the Point Dume Nature Preserve and authorize the City Manager to execute the agreement.

Councilmember House requested that the contract include a requirement for reporting on shuttle use.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to award a two-year contract to Administrative Services Cooperative, Inc., d.b.a. LA Yellow Cab to provide shuttle service to and from the Point Dume Nature Preserve and authorize the City Manager to execute the agreement, adding a condition to require shuttle counts. The motion carried unanimously.

Mayor Kearsley requested information regarding use over past year and cost per rider.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

- A. Proposed Budget and Appropriations Limit for FY 2003-2004
Staff recommendation: 1) Conduct the public hearing; 2) consider additional budget issues; 3) adopt Resolution No. 03-21 adopting the Annual Budget for FY 2003-2004; 4) adopt Resolution No. 03-22 establishing the Appropriation Limit for FY 2003-2004; 5) consider recommendation of Administration and Finance Subcommittee and approve General Fund Grants; and 6) consider City Council Major Goals and take action as appropriate.

Administrative Services Director James presented the staff report.

Mayor Pro Tem Barovsky discussed the Administration and Finance Subcommittee's recommendation on the General Fund grants.

Kathy Wiznicki expressed her thanks and gratitude for the Council's support of Measure S. She discussed School District funding shortfalls. She stated the health and safety of the children was at risk. She urged the Council to include substantial ongoing funding to the Santa Monica - Malibu School District.

Mayor Pro Tem Barovsky asked City Attorney Hogin to comment on Ms. Wiznicki's request and the legality of it. City Attorney Hogin stated that the City had discussed in the past that the City and School District are two separate taxing entities. She explained that the City was limited on its use of its taxes. She stated the City could assist the School District by way of shared use agreements and fund programs that provide a benefit to the municipal taxpayers.

Mayor Kearsley asked if Santa Monica was legally giving money to the School District. City Manager Lichtig stated Santa Monica had long discussions and recently passed a joint use agreement to provide \$130,000

to the School District. She stated Santa Monica had previously deemed it illegal, but did it any way.

Mayor Pro Tem Barovsky asked Administrative Services Director James to determine what the City gave to youth and the School District. In response to Mayor Pro Tem Barovsky, City Manager Lichtig indicated Santa Monica's budget was \$350 million. Mayor Pro Tem Barovsky indicated support for the School District. She discussed the Affinity credit card.

Councilmember House discussed the budgetary crisis in the education system. She encouraged the School District to consider budgetary constraints.

Councilmember Jennings discussed the Vehicle License Fee (VLF) roll back. He asked how much money the restored VLF would provide to the City. City Manager Lichtig explained that the compromise indicated that cities and counties would not be completely spared from cutbacks. She stated it appeared that cities would be asked to take between \$3 and \$5 million reductions, considerably less than previously indicated.

Councilmember Jennings stated the City could not make an ongoing line item for the School District of sufficient size to help solve the problem that exists. He stated the City could divert surplus funds in this emergency situation. He provided an overview of the evolution of Malibu schools. He suggested redirecting a portion of the surplus to the School District. He suggested redirecting \$1.5 million over a five-year period, \$300,000 per year.

Mayor Pro Tem Barovsky asked when the Council should address the emergency request from the Labor Exchange. She proposed providing \$15,000 for the Labor Exchange until Community Development Block Grant (CDBG) funds are available. She stated she could not support Councilmember Jennings recommendation until she reviewed it further.

Mayor Kearsley discussed sales tax revenue generated in Santa Monica. He discussed the crisis in the school system.

Councilmember Stern asked if Councilmember Jennings was suggesting lowering the reserve to \$6.4 million. Councilmember Jennings discussed the initial goal of an \$8 million reserve. He stated the City had to choose the most urgent need and respond to it first.

In response to Mayor Kearsley, Administrative Services Director James explained that the City's share of a property tax by 1% would be \$37,233.

Councilmember House discussed upcoming costs related to litigation. She discussed the Council's action on June 3, 2003 to see if the City could purchase the Chili Cook-off site. She indicated she could not, at this point, support Councilmember Jennings' suggestion.

Mayor Pro Tem Barovsky suggested referring Councilmember Jennings' suggestion to the Administration and Finance Subcommittee.

In response to Councilmember House, Administrative Services Director James explained that the General Fund was a balanced budget, with some funds were based on reimbursements. Councilmember House suggested reviewing City Council Goals at the next quarterly meeting. In response to Councilmember House, Administrative Services Director James explained that the City Treasurer had requested state-mandated cost claims as a general ledger item. She suggested an asterisk to explain permit fees. In response to Councilmember House, City Manager Lichtig stated the \$25,000 eliminated from City Council professional services budget was for Vision 2020. Councilmember House requested the analysis of position changes be reviewed by Administration and Finance. City Manager Lichtig indicated staff would do that in the future. Councilmember House asked if reclassification of Account Technician would reduce the need for consultants. Administrative Services Director James stated it was her intention to utilize the technician to reduce consultant fees. Councilmember House requested the Administration and Finance Subcommittee review the Information Technology position and Account Technician Reclassification.

In response to Councilmember Jennings, City Manager Lichtig explained that staff hoped the Council would take action tonight, but that the item could be continued to the next meeting.

MOTION Mayor Kearsley moved and Mayor Pro Tem Barovsky seconded a motion to refer to the Administration and Finance Subcommittee, Councilmember Jennings' proposal to allocate \$1.5 million (\$300,000 per year for the next five years), to the Santa Monica - Malibu Unified School District and for the Administration and Finance Subcommittee to review all possible funding sources for schools.

Councilmember Jennings stated he could support the motion as long as it would come back for full Council consideration.

Mayor Pro Tem Barovsky suggested school supporters be invited to attend the Administration and Finance Subcommittee meeting.

Councilmember House suggested reviewing the budget at the October Quarterly City Council meeting to determine the status of the State budget.

AMENDMENT

Mayor Kearsley moved to amend the motion to bring the matter back at the July Quarterly City Council meeting. Mayor Pro Tem Barovsky accepted the amendment.

Mayor Kearsley suggested implementing up to a half-cent sales tax increase. He proposed the Administration and Finance Subcommittee consider placing the matter on the ballot if passed through legislation.

Laura Rosenthal stated jobs would be lost if funding was not provided to the School District until July. She explained that designation of sales tax funds required a 2/3rds vote.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to close discussion on the matter. The motion carried 3-2, Councilmember Jennings and Mayor Kearsley dissenting.

AMENDMENT

Councilmember Jennings moved to amend the motion to bring back the Administration and Finance Subcommittee recommendation on School District funding at the June 23, 2003 City Council meeting for Council consideration. The maker and seconder of the motion accepted the amendment.

The question was called on the amended motion and the amended motion carried unanimously.

MOTION Mayor Pro Tem Barovsky moved and Councilmember House seconded a motion to allocate an additional \$15,000 from the General Fund Reserve to the General Fund Grants for the Malibu Labor Exchange. The question was called and the motion carried unanimously.

Councilmember Jennings stated he felt grant monies ought not be awarded to the same applicants year after year. He stated his preference would be to give people what they ask for and give fewer grants.

Mayor Pro Tem Barovsky explained the rationale for awarding the grant funds.

Councilmember House explained funding of school youth counseling and bilingual services.

Mayor Kearsley stated human needs should come first. He commended the Administration and Finance Subcommittee.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to adopt Resolution No. 03-21, adopting the Annual Budget for FY 2003-2004, including amending the General Fund Grant amount to include \$15,000 for a total amount of \$84,400. The motion carried unanimously.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to adopt Resolution No. 03-22, establishing the Appropriation Limit for FY 2003-2004. The motion carried unanimously.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to adopt the Council Goals as presented, with review at the July 2003 Quarterly City Council meeting. The motion carried unanimously.

RECESS Mayor Kearsley called a recess at 8:50 p.m. The meeting reconvened at 9:05 p.m. with all Councilmembers present.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

- A. Malibu Bay Company Development Agreement Study Session – Applicant/Owner: Malibu Bay Company; Locations: Civic Center, Trancas Canyon, and Point Dume areas
Staff recommendation: Receive staff report and discuss the proposed Malibu Bay Company Development Agreement and its various components as well as the Draft Environmental Impact Report.

Senior Planner Albright presented the staff report. He indicated modifications to the calculations indicated in the staff report.

Laura Kaufman, Envicom Corporation, presented a brief background on the process and Environmental Impact Report (EIR).

Interim Planning Director Knight indicated Envicom had provided slides summarizing the EIR.

Helene Eisenberg urged the Council to pass the Malibu Bay Company Development Agreement.

Marlene Matlow discussed the proposed donation of land for a community center and ball fields on Point Dume. She stated the City should approve the development agreement as written.

Judy Decker discussed the community center proposed in the development agreement.

Bob Purvey was not present.

Paul Grisante urged the Council to consider the development agreement and send it on to the voters.

Nidra Winger discussed her involvement at the Point Dume Community Center. She indicated support for the proposed community center.

Beverly J. Hammond, President of the Point Dume Community Services District, urged the Council to proceed with the development agreement. She urged the Council to keep in mind that the endowment money proposed in the development agreement was essential to keep the facilities properly maintained.

Doug O'Brien was not present.

Dermot Stoker was not present.

Maxwell Gail, Jr. stated he supports the need for an urgent care facility and senior center. He stated that the conversation about the Malibu Bay Company Development Agreement was improving. He encouraged continuing thoughtful, meaningful conversation.

David Kagon stated he did not know, to a definitive degree, what the Malibu Bay Company can do with its property if they have to resort to the Zoning Ordinance restrictions. He questioned

whether the Malibu Bay Company could develop on its Civic Center property under the Interim Zoning Ordinance.

John Mazza was not present.

Jack Corrodi was not present.

Ozzie Silna explained that there was no representation that the Malibu Bay Company was doing anything with regards to the Malibu Urgent Care Center. He stated the General Plan Amendment was related to a specific project and was subject to the initiative process.

Kay Furgurson stated it was only prudent to approve the development agreement and let the voters decide. She stated Malibu Bay Company would build a new urgent care center.

Jo Fogg indicated full support for the generous development agreement. She wished the Council luck as it took on the matter.

Ted Vaill reviewed each property included in the development agreement. He suggested the Point Dume property to be a turnkey deal.

Ryan Embree commended the Malibu Bay Company for capturing the single most important issue to voters and the community center. He expressed concern with the traffic issues. He stated the discussion and detail of traffic was grossly inadequate in the EIR. He requested the Malibu Bay Company pledge to have no compact parking spaces, and for the City to establish minimum service levels for its main arterial roads.

Mayor Pro Tem Barovsky asked about the residential development on the Trancas site. Senior Planner Albright explained that a 10-acre open space site was being proposed.

Councilmember House asked how construction environmental impacts could be mitigated. Ms. Kaufman indicated some air quality impacts may occur during construction. She stated it was difficult to maintain Air Quality Management District (AQMD) regulations during construction. Councilmember House stated she did not see how anyone could fully mitigate during construction. In response to Councilmember House, Ms. Kaufman stated height and topography were considered in view impact analysis. Senior

Planner Albright explained that the proposed residences on the Trancas site were 18 feet or less. Ms. Kaufman stated that the impacts still needed to be assessed for consistency with the Code. She explained that aesthetics were required to be reviewed under CEQA.

Jack Block, Envicom, stated it was an objective of the City to protect the views from public spaces and therefore it was considered in the EIR.

In response to Councilmember House, Senior Planner Albright indicated a constraints analysis was prepared by staff in November 2002. Councilmember House suggested the information be made available.

In response to Councilmember House, City Attorney Hogin indicated that the City had complied with all CEQA requirements.

In response to Councilmember House, Senior Planner Albright indicated a summary of the Environmental Review Board (ERB) would be provided in the June 18, 2003 staff report.

In response to Councilmember House, Senior Planner Albright indicated standard parking spaces were proposed.

In response to Councilmember House, Ms. Kaufman explained that the public service and utilities sections were written based on information provided by public service agencies. She discussed the information provided at the Planning Commission meeting regarding public services. Councilmember House requested a copy of the letter from the Sheriff's Department regarding impact on services.

Councilmember House asked whether Point Dume was buildable based on geology. Ken Wilson, Envicom, discussed the Point Dume property and the proposal for a senior/teen center and playing fields. He stated that it would be necessary for the proponent of the development to do all the work within the constraints of the Uniform Building Code and the City's Building Code. He further indicated that Envicom did not believe there were any geology issues. He discussed the Paradise Cove fault, which would need to be mitigated and appropriate set back determined. He discussed the fact that the general soil conditions were very amenable to the proposed development. He stated that

Envicom did not see any constraints to that type of construction on the site.

Mayor Kearsley asked if Mr. Wilson was the geologist / hydrologist. Mr. Wilson indicated that Mr. Mizaki worked with him on the analysis.

Councilmember Jennings stated the argument was that the presence of a fault would inhibit development of the site for commercial purposes if the development agreement did not go through. Mr. Wilson indicated that it would depend on the size and scale of the project. He stated that a larger project could run into constraints.

Mayor Pro Tem Barovsky questioned whether 123,000 square feet of commercial development could be developed on the Point Dume site.

Mayor Kearsley stated a building could be engineered to geologic constraints.

In response to Councilmember House, Mr. Niles discussed the geology done for the Point Dume property and adjacent sites. He stated a fault was found which went through the site. He estimated that approximately 105,000 to 125,000 square feet could be built on the site with no geologic issues. He stated that the site was buildable and that the percolation was phenomenal.

Councilmember House provided an overview of the Council's discussion on Malibu Bay Company properties and establishment of the development agreement.

Mayor Kearsley stated that he felt the ad hoc committee and City Manager got the best deal that the Malibu Bay Company would give.

Councilmember House discussed the proposed benefits in the development agreement, including a post office, urgent care center and the need for new market at the Trancas site.

Councilmember Jennings discussed the St. John's site land uses. He indicated the City now had an agreement with exhibits attached to it. He indicated that the St. John's land use and development standard exhibit shows that the developer may demolish the

St. John's and U.S. Post Office structures and may replace them with medical offices or commercial offices. He asked whether Section 4.1.2.4 could be tightened to insure that an urgent care center was developed. He questioned Section 4.1.2.5, which was Mr. Niles' design.

Councilmember Stern indicated he had no comments.

Mayor Pro Tem Barovsky indicated she watched the Commission meeting and that she was somewhat offended by some Commissioner's comments on the way the development agreement was negotiated. She stated that the urgent care facility was not an amenity. She asked if the Niles' design was included in development agreement.

Mayor Kearsley indicated he would focus on Winter Canyon, particularly the mathematical model developed for aquifer. He requested that the hydro/geologist answer questions specific to the Winter Canyon area. He asked about assumptions made that Caltrans could do what was necessary for mitigation and the result of the mitigation if Caltrans did not do it. He indicated that the City must make findings of overriding consideration.

Councilmember Stern asked how the constraints analysis was determined. He asked what could be built on the sites.

Mayor Kearsley stated that the Winter Canyon site was definable and that the aquifer had margins. He asked whether the City had the right to give up underground rights in the aquifer to a private company, take most of the use for its own use, yet only own a percentage of the surface area. He asked City Attorney Hogen to look into parallel law and oil extraction law.

Mayor Pro Tem Barovsky asked if the town center overlay included condominiums in Winter Canyon.

ITEM 7. COUNCIL ITEMS

- A. Nominations to the Santa Monica Bay Restoration Commission Governing Board (Mayor Kearsley)

MOTION Councilmember Jennings moved and Mayor Pro Tem Barovsky seconded a motion to nominate Mayor Kearsley to the Santa Monica Bay

Restoration Commission Governing Board with Councilmember Stern as an alternate. The motion carried unanimously.

ADJOURN At 10:47 p.m., Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of
the City of Malibu on January 12, 2004.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)